

# THE LAWYER'S ROLE IN A HOME PURCHASE TRANSACTION

Buying a home is one of the most important investments you will make. Protecting that investment is important to you.

You need to know that all of the legal issues involved in buying your home are properly handled. You want to feel secure about the fact that you own your home. You may also need advice about who should officially own the property, what kind of mortgage you should get, and many other decisions that have to be made when buying a home.

Your lawyer is there to help guide you through this process, and to protect your interests at every step of the way.

## **Before You Sign an Offer to Purchase**

An offer to purchase is a contract that is binding on both you, the buyer, and on the vendor. Seeing a lawyer before you sign that offer can help avoid difficulties later on, and ensures you that your best interests are protected.

For example, your lawyer can advise you to:

- include escape clauses that will allow you to cancel your offer if you cannot proceed with the purchase. For instance, you may want to cancel your offer if you discover that the property is not what you thought it was, you were not able to arrange the mortgage you need, or you were unable to sell your present home;
- request a warranty that the property conforms to all municipal by-laws, zoning regulations and housing standards;
- include an exact list of the accessories that you expect to buy with the home;

Your lawyer can also help you determine exactly how much it will cost to buy the house. You need to plan for extra costs such as land transfer tax, document registration fees, search fees, your lawyer's fees, and monies that you will have to pay the vendor for items such as heating oil already in the tank or any pre-paid utility bills and taxes – none of which are included in the purchase price.

## **After the Vendor Accepts Your Offer to Purchase**

The offer to purchase is only the beginning of the complex process of buying a home.

Once the vendor has accepted your offer, your lawyer starts to work on many fronts. You can expect your lawyer to ask you many questions about the specific property you plan to purchase and how you intend to use it. Over the following weeks, your lawyer will complete a series of legal inquiries, searches of records and extensive fact-checking, to make sure that, on closing, you really own the home and that you will be allowed to live there (in other words, confirming that the present use of the property is legal).

## **Providing Advice and Fact-Checking**

Among many responsibilities, your real estate lawyer acts as your trusted advisor. It is your lawyer's job to check various details and advise you on a wide range of matters.

For example, your lawyer usually will:

- prepare and check mortgage documents and explain the terms of your mortgage;
- explain the different ways in which you can own the property if you are buying it with someone else, and the difference between being joint tenants and tenants-in-common;
- check the statement of adjustments to ensure that you are paying only your share of the taxes, utility and fuel bills, and other costs that have been pre-paid by the vendor;
- explain the purposes of the documents that you have to sign.

## **Facilitating the Buying Process**

To help make the transfer of ownership from vendor to you, the buyer, as smooth as possible, your lawyer may also:

- arrange with utility companies to have hydro, water and fuel meters read on the date of closing, and to have all future bills addressed to you;
- ensure that you have home insurance in place as of the closing date;
- hold in trust your closing funds and those provided by the mortgage lender, and transfer them to the vendor to ensure the home purchase closes; and
- arrange for you to receive the keys to your home as soon as possible after closing.

### **Assuring you of Good Title**

One of the more important parts of your lawyer's job is to make sure that you have good title to the property that you are buying.

### **Why is good title important?**

Good title ensures that you really own the property, that it is correctly described in official documents and properly registered, and that no one else has a claim or a lien to it that you do not know about.

For example, mortgage holders, contractors, tenants and the spouse of the person selling the home may all have rights to the property that need to be resolved before the sale can proceed.

### **Good title is essential for you to be able to sell your home in the future.**

As part of title-related responsibilities, your lawyer usually will:

- check that the person who is selling you the home has a right to sell the property, and that no one else has a claim to it or a lien on it;
- consider survey-related issues such as whether anything on your property encroaches (intrudes) on neighbouring properties, or if neighbours are in fact using a part of your property;

- determine if any other organizations have interests in your property that could restrict your use of it. For example, there may be easements that give utilities the right to install and access hydro or gas lines. As well, if some or all of the home is being rented, tenants have rights that could affect your ownership;
- contact local utilities and the municipality to find out if there are liens against the property because of unpaid utility or tax bills;
- arrange title insurance;

If there are problems that could affect title to your property, your lawyer could take steps to fix the matter (often working with the vendor's lawyer). If the problem cannot be corrected, your lawyer will explain to you the risks of taking title without resolving the problem.